

Exhibit 1

Approved, SCAO STATE OF MICHIGAN JUDICIAL DISTRICT 43rd JUDICIAL CIRCUIT COUNTY PROBATE		Original - Court 1st copy - Defendant SUMMONS	2nd copy - Plaintiff 3rd copy - Return CASE NO. 19- <u>642</u> -CH-5
Court address 60296 M-62, Cassopolis, Michigan 49031		Court telephone no. (269) 445-4416	
Plaintiff's name(s), address(es), and telephone no(s). CERES FARMS, LLC		Defendant's name(s), address(es), and telephone no(s). THE NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK c/o Resident Agent: CT Corporation System 1015 15 th Street, N.W. Suite 1000 Washington, DC 20005	
Plaintiff's attorney, bar no., address, and telephone no. Thomas R. TerMaat (P52682) FOSTER SWIFT COLLINS & SMITH, PC 1700 East Beltline, NE, Suite 200 Grand Rapids, Michigan 49525 (616) 726-2200		TRUE COPY DEC 11 2019 CASS COUNTY CLERK MONICA M. MICHAEL	

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date <u>12-11-19</u>	Expiration date * <u>3-10-2020</u>	Court clerk <u>Monica Michael, Clerk</u>
-------------------------------	---------------------------------------	---

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE**SUMMONS**Case No. 19-642-CH-S

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE **OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

OR **AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), that: (notarization required)

- I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with

List all documents served with the summons and complaint

on the defendant(s): _____

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, County, Michigan.
 Date _____

My commission expires: _____ Signature: _____ Deputy court clerk/Notary public

Date _____ Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

on _____ Day, date, time _____

on behalf of _____

Signature _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CASS

CERES FARMS, LLC, an Indiana limited
liability company,

Plaintiff,

v
Case No. 19-1042 -CH-S

HON. Susan Dobeck

THE NATIONAL RAILROAD PASSENGER
CORPORATION, d/b/a Amtrak,

Defendant.

Thomas R. TerMaat (P52682)
FOSTER SWIFT COLLINS & SMITH PC
Attorneys for Plaintiff
1700 East Beltline, N.E.
Suite 200
Grand Rapids, Michigan 49525
(616) 726-2200

TRUE COPY
DEC 11 2019
CASS COUNTY CLERK
MONICA MCMICHAEL

COMPLAINT

There is no other pending or resolved civil action arising out of the
same transaction or occurrence as alleged in the complaint.

NOW COMES Plaintiff Ceres Farms, LLC, by and through its attorneys, Foster Swift
Collins & Smith PC, and for its Complaint against Defendant states as follows:

PARTIES AND JURISDICTION

1. At all times relative to this cause, Plaintiff Ceres Farms, LLC ("Ceres Farms") is
an Indiana limited liability company and is the owner of certain real property commonly known
as Parcel 12 (Parcel Identification Number 14-110-032-520-00) and Parcel 16 (Parcel

Identification Number 14-020-005-001-00) located in the Townships of Pokagon and Howard, County of Cass, State of Michigan (the "Property").

2. The Property is more particularly described as:

Parcel 12:

The East Half of the Southeast Quarter of Section 32, T. 6 S., R. 16 W., Pokagon Township, Cass County, Michigan. Excepting therefrom the land of the Michigan Central Railroad more particularly described as: Beginning at the East Quarter post of said Section, thence S. 00° 12' 07" W., along the East line of said Section, 971.72 ft. to the Northwesterly right-of-way line of the Michigan Central Railroad, thence S. 36° 04' 14" W., along said right-of-way line, 2051.66 ft. to the South line of said Section, thence N. 89° 15' 33" W., along said South line, 119.33 ft. to the Southwest corner of said East Half of the Southeast Quarter, thence N. 00° 16' 25" E., along the West line of said East Half of the Southeast Quarter, 2644.76 ft. to the Northwest corner of said East Half of the Southeast Quarter, thence S. 89° 17' 41" E., along the East and West Quarter line of said Section, 1318.20 ft. to the point of beginning. ALSO: Beginning at the Southeast corner of said Section 32, thence N. 89° 15' 33" W., along the South line of said Section, 1018.31 ft. to the Southeasterly right-of-way line of the Michigan Central Railroad, thence N. 36° 04' 14" E., along said right-of-way line, 1737.88 ft. to the East line of said Section, thence S. 00° 12' 07" W., along said East line, 1417.89 ft. to the point of beginning. Containing a total of 73.621 acres more or less. Subject to the rights of the public lying in Thompson Road. Subject also to any and all easements of record.

Parcel Identification Number 14-110-032-520-00

(See Exhibit A)

Parcel 16:

That part of the North fractional Half of the Northeast fractional Quarter of fractional Section 5, T. 7 S., R. 16 W., Howard Township, Cass County, Michigan which is described as: Beginning at the Northeast corner of said fractional Section 5, thence S. 00° 18' 05" W., along the East line of said fractional Section, 1267.64 ft. to the South line of said North fractional Half, thence N. 88° 00' 43" W., along said South line, 1998.58 ft. to the

Southeasterly right-of-way line of the Michigan Central Railroad, thence N. 36° 04' 14" E., along said right-of-way line, 1500.06 ft. to the North line of said fractional Section 5, thence S. 89° 15' 33" E., along said North line, 1018.31 ft. to the Southeast corner of Section 32, T. 6 S., R. 16 W., Pokagon Township, Cass County, Michigan, thence S. 89° 25' 20" E., along said North line of fractional Section 5, 102.62 ft. to the point of beginning. Containing 44.811 acres more or less. Together with and subject to any and all easements of record.

Parcel Identification Number 14-020-005-001-00

(See Exhibit B)

3. At all times relative to this cause, Defendant The National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") is incorporated in the District of Columbia with a principal place of business at 1 Massachusetts Avenue N.W., Washington, D.C.

4. This Complaint involves a dispute regarding real property located in Cass County, State of Michigan.

5. Jurisdiction in this Court is proper pursuant to MCL 600.601.

6. Venue lies in the County of Cass pursuant to MCL 600.1605.

GENERAL ALLEGATIONS

7. Plaintiff incorporates by reference its allegations contained in paragraphs one (1) through six (6) as if fully stated herein.

8. Non-parties Robert J. Lamberton, Jr. and Carol Y. Lamberton were prior owners of the subject Property.

9. In 1999, Defendant Amtrak granted the Lambertons, their successors, and assigns a non-exclusive, perpetual easement for ingress and egress to the Property over Defendant's right-of-way alongside a high-speed rail corridor. The Easement Agreement was recorded on

December 20, 1999, at Liber 721, Page 417 of the Cass County Register of Deeds (the "Easement Agreement") and is attached as Exhibit C.

10. Robert J. Lamberton, Jr. died on December 19, 2005. (Exhibit D)
11. Thereafter, Carol Y. Lamberton, a single woman, conveyed the Property to Edwin Kerlikowske, Jr. and Tina M. Kerlikowske, husband and wife, and Edwin Kerlikowske, Sr. and Mary Ellen Kerlikowske, husband and wife, through two Warranty Deeds recorded on May 14, 2008, at Liber 977, Page 1853 and Liber 977, Page 1856 of the Cass County Register of Deeds. (Exhibit E)
12. The Kerlikowskes then conveyed the Property to Braden S. Janowski, a married man, via Warranty Deed recorded on May 13, 2011, at Liber 1026, Page 36 of the Cass County Register of Deeds. (Exhibit F)
13. Mr. Janowski and his wife, Amber R. Janowski, then conveyed the Property to Plaintiff Ceres Farms via Special Warranty Deed recorded on May 13, 2011, at Liber 1026, Page 48 of the Cass County Register of Deeds. (Exhibit G)
14. Ceres Farms conducts farming operations on the Property, as well as other real property located in Pokagon and Howard Townships, Michigan.
15. Amtrak's railroad tracks bisect Parcel 12.
16. Parcel 16 is adjacent to the railroad tracks and immediately south of Parcel 12.
17. Historically, Ceres Farms and its predecessors-in-interest have accessed the Property pursuant to the Easement Agreement through an unimproved roadway on Amtrak's right-of-way parallel to the railroad tracks (the "Roadway").
18. There is no other means of ingress or egress to the Property other than over the aforementioned Roadway.

19. At all relevant times, Ceres Farms and its predecessors-in-interest regularly and consistently traveled the Roadway to farm and make other use of the Property.

20. Amtrak has not used the Roadway productively for any material purpose or duration.

21. At all relevant times, use of the Roadway by Ceres Farms and its predecessors-in-interest was readily observable to individuals traveling on nearby public roads, passing on a train, or anyone located within range of sight.

22. At no material time did Ceres Farms or its predecessors-in-interest ask Amtrak's permission to use the Roadway.

23. The above described use of the Roadway went undisturbed until early 2019, when Amtrak constructed a barrier across the access point to the Roadway.

24. Due to the barrier, Ceres Farms cannot access the Roadway and, therefore, cannot access the Property.

25. Plaintiff has attempted to resolve this access issue with Defendant without the need for litigation.

COUNT I
TRESPASS

26. Plaintiff incorporates by reference the allegations contained in paragraphs one (1) through twenty-five (25) as if fully stated herein.

27. Ceres Farms, owner of the dominate estate, has a right to use and possess the Roadway for ingress and egress to the Property, pursuant to the recorded Easement Agreement.

28. Amtrak, the owner of the servient estate, has impeded, and continues to impede, Ceres Farms' right to use and possess the Roadway.

29. Amtrak's interference with Ceres Farms' right to use and possess the Roadway constitutes a trespass.

30. Due to Amtrak's trespass, Ceres Farms has incurred damages including, but not limited to, ejectment from its land and lost profits.

WHEREFORE, Plaintiff Ceres Farms, LLC, respectfully requests a judgment in an amount exceeding \$25,000, in addition to its costs and fees incurred in bringing this cause of action and such other relief as this Court deems just and proper.

COUNT II
DECLARATORY JUDGMENT – PRESCRIPTIVE EASEMENT

31. Plaintiff incorporates by reference the allegations contained in paragraphs one (1) through thirty (30) as if fully stated herein.

32. Ceres Farms and its predecessors-in-interest used, maintained, occupied, and otherwise possessed the Roadway in question openly, continually, visibly, notoriously, exclusively, distinctively, and in a hostile way to all third-parties for more than fifteen (15) years.

33. Specifically, Ceres Farms and its predecessors-in-interest have utilized the Roadway for ingress and egress to the Property.

34. As such, Ceres Farms has an easement by prescription to use the Roadway for ingress and egress purposes.

35. There is an actual controversy between the parties, and a multiplicity of litigation will be avoided if this issue is determined by the Court.

36. Pursuant to MCR 2.605, this Court has the power to adjudicate the matters at issue and to enter an Order declaring the rights of the parties.

WHEREFORE, Plaintiff Ceres Farms, LLC respectfully requests that this Honorable Court enter an Order:

- A. Declaring that Plaintiff has an easement by prescription over the Roadway for ingress and egress purposes to access the Property;
- B. That such easement is appurtenant to and runs with Parcel 12 (Parcel Identification Number 14-110-032-520-00) and Parcel 16 (Parcel Identification Number 14-020-005-001-00);
- C. That Amtrak shall remove any obstructions or encroachments in order to allow Plaintiff access to the Roadway for ingress and egress purposes to access the Property;
- D. That a certified copy of this Court's Order may be recorded by the Cass County Register of Deeds to memorialize same in the record title to Parcels 12 (Parcel Identification Number 14-110-032-520-00) and Parcel 16 (Parcel Identification Number 14-020-005-001-00); and
- E. Awarding Plaintiff its costs and fees incurred in bringing this cause of action or such other relief as this Court deems just and proper.

COUNT III
DECLARATORY JUDGMENT - EASEMENT BY NECESSITY

37. Plaintiff incorporates by reference the allegations contained in paragraphs one (1) through thirty-six (36) as if fully stated herein.
38. Use of the Roadway for ingress and egress to the Property can be traced back to at least 1999. (Exhibit C)
39. Without an easement over the Roadway, the Property is landlocked.

40. There is an actual controversy between the parties, and a multiplicity of litigation will be avoided if this issue is determined by the Court.

41. Pursuant to MCR 2.605, this Court has the power to adjudicate the matters at issue and to enter an Order declaring the rights of the parties.

WHEREFORE, Plaintiff Ceres Farms, LLC respectfully requests that this Honorable Court enter an Order:

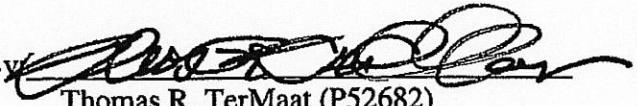
- A. Declaring that Plaintiff has an easement by necessity over the Roadway for ingress and egress purposes to access the Property;
- B. That such easement is appurtenant to and runs with Parcel 12 (Parcel Identification Number 14-110-032-520-00) and Parcel 16 (Parcel Identification Number 14-020-005-001-00);
- C. That Amtrak shall remove any obstructions or encroachments in order to allow Plaintiff access to the Roadway for ingress and egress purposes to access the Property;
- D. That a certified copy of this Court's Order may be recorded by the Cass County Register of Deeds to memorialize same in the record title to Parcels 12 (Parcel Identification Number 14-110-032-520-00) and Parcel 16 (Parcel Identification Number 14-020-005-001-00); and
- E. Awarding Plaintiff its costs and fees incurred in bringing this cause of action or such other relief as this Court deems just and proper.

Respectfully submitted,

FOSTER SWIFT COLLINS & SMITH, PC
Attorneys for Plaintiff

Dated: December 10, 2019

By:


Thomas R. TerMaat (P52682)
1700 East Beltline, N.E.
Suite 200
Grand Rapids, Michigan 49525
(616) 726-2200

80273:00061:4533357-1

MICHIGAN SURVEYS. THE REQUIREMENTS OF
SECTION 53 OF ACT #132 OF P. A. 1970
AS AFOUNDED HAVE BEEN COMPLIED WITH.

MICHIGAN PROPERTY SURVEY

COMPANY ORDERED BY: Kerkowkske Farms
CONTACT PERSON: Ed Kerkowkske
FIELD WORK DATE: 08 April 08
PROJECT NO.: M-0860JS

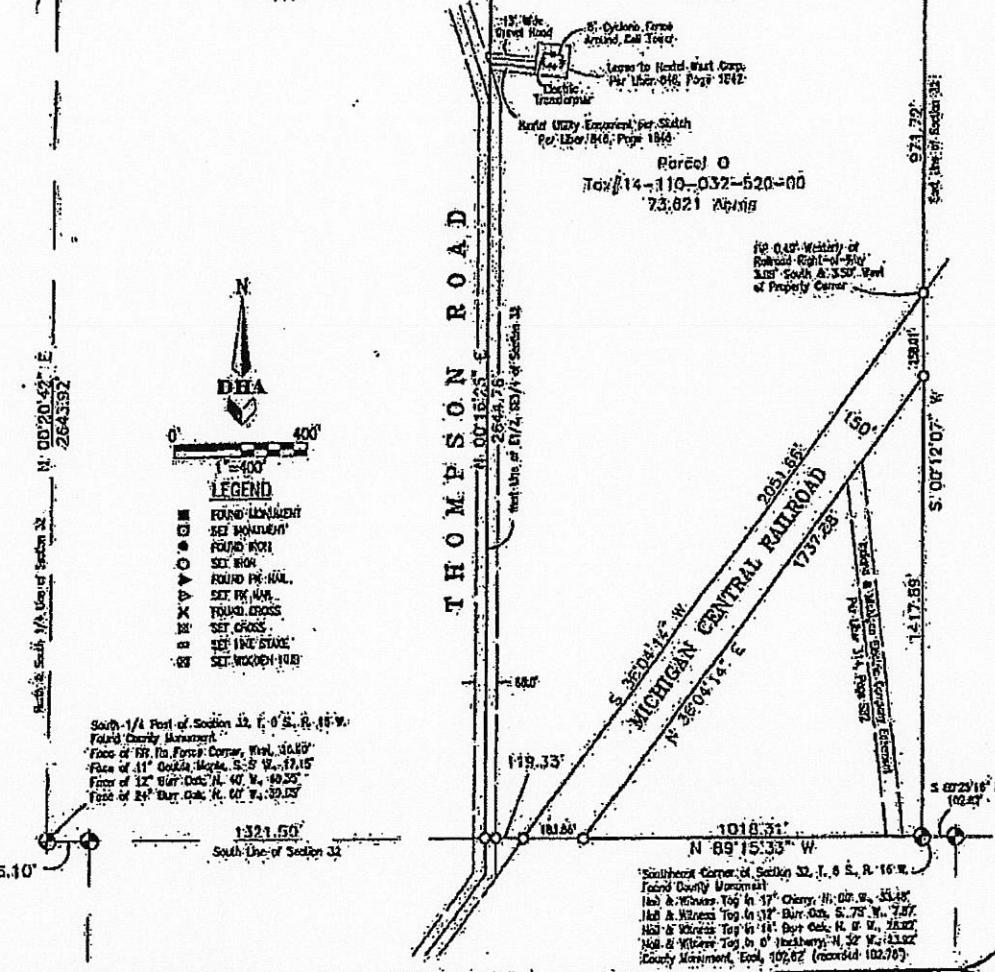
DRAWN BY: CS.
BUYER: Kerkowkske Farms
REVISED DATE: N/A
ADDRESS: Thompson Road

Corner of Section 32, T. 6 S. R. 16 W.
Front 5 1/4 Sides Open, Field
No Water Available

Front 1 1/4 Part of Section 32, T. 6 S. R. 16 W.
Front, lot Red Top #22435
Front 1 1/4 Part of Section 32, T. 6 S. R. 16 W.
Front 1 1/4 Part of Section 32, T. 6 S. R. 16 W.
Front 1 1/4 Part of Section 32, T. 6 S. R. 16 W.

East 4 1/4 Unit of Section 32
1318.20'

S 16° 12' 41" E
1318.20'



To: Kerkowkske Farms

I, the undersigned am a Registered Land Surveyor in the State of Michigan and hereby certify that I have surveyed the lands herein described and delineated. That a FIELD ERROR OF CLOSURE was no greater than 1 in 5,000. That the attached plan is a true representation of said survey. That there are no encroachments other than as shown.

J.L. Hunter J.S., #22435



Danch, Harner & Associates, Inc.
Land Surveyors • Professional Engineers
Landscape Architects • Land Planners
W.W.W. danchharner.com
Office: 269-471-3910 Fax: 269-471-2257
208 W. Main Street • Berlin Springs, MI 49103

21

24